



July 30, 2001

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-3282

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149999.

The Texas Department of Human Services (the "department") received a request for information regarding River Oaks Special Care, a home and community support services agency regulated by the department. You state that a portion of the requested information has been released to the requestor. You claim, however, that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that it appears that this office has previously ruled on the submitted Form DHS 3724, Statement of Licensing Violations and Plan of Correction, in Open Records Letter No. 2001-2687 (2001) and marked the information therein that may only be released in accordance with section 159.002 of the Medical Practice Act (the "MPA"), chapter 159 of the Occupation Code. As the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the department must withhold the submitted Form DHS 3724 in accordance with Open Records Ruling No. 2001-2687 (2001).¹

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

We now address your claimed exceptions with respect to the remaining submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that portions of two state forms submitted in Attachment C, Statement of Deficiencies and Plan of Correction, are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under [Chapter 142] are confidential and may not be released or made public except:

...

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency[.]

You acknowledge that section 142.009(d)(5) requires the department to release these two forms; however, you contend that the department must withhold the facility representative's name and title. We disagree and conclude that section 142.009(d)(5) of the Health and Safety Code does not apply to the facility representative's name and title in the Statement of Deficiencies and Plan of Correction forms submitted in Attachment C. Therefore, the department must release this information.

You further contend that portions of the information in Attachment C are made confidential under the MPA. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).

For the most part, we agree that the information you have marked in the Statement of Deficiencies and Plan of Correction forms in Attachment C must be withheld from required public disclosure under section 159.002 of the Occupations Code. However, we have marked some information that you have highlighted that is not information made confidential by section 159.002. This information must be released.

To summarize, we conclude that: (1) the department must withhold the submitted Form DHS 3724 in accordance with Open Records Ruling No. 2001-2687 (2001); (2) section 142.009(d)(5) of the Health and Safety Code does not apply to the facility representative's name and title in the Statement of Deficiencies and Plan of Correction forms; and (3) with the exception of the marked information that the department must withhold under section 159.002 of the Occupations Code, the Statement of Deficiencies and Plan of Correction forms must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 149999

Enc: Submitted documents

c: Ms. Tonya Holloway
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(w/o enclosures)